

Serial No.: 10/507,467
Office Action Date: May 21, 2008
Amendment Dated: June 20, 2008

REMARKS

Reconsideration of this application is respectfully requested. Applicants believe that consideration of this amendment is proper because they have attempted to comply with every requirement expressly set forth in the previous Office Action dated May 21, 2008 (Paper No. 20080429) and believe the application is now in condition for allowance.

Claims 1, 20 and 22 have been amended to include the gas source as part of the claim. Support for this amendment is found in the specification on page 2, lines 10-21; page 6, line 16-17 and in original claim 1. No new matter is believed to be introduced by these amendments.

Claims 1-2, 4-7, 13, 15, 17-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Flower in U.S. Patent No. 3,520,300. Applicants respectfully traverse the rejection. The cited reference fails to recite each and every element of Applicants claims.

Flower fails to disclose the gas source that has been included by amendment in claims 1 and 20. The Examiner contends that a suction device could be run in a reverse mode to supply gas. One skilled in the art would not utilize a suction device in this manner as it would surely contaminate the surgical field. Further, if the

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suction device were operated in reverse, element 50 would not act as a separator of any kind and there would be no filter.

Arguments previously asserted with regard to the meaning of the term “filter” are reasserted here. Applicants reiterate their contention that, by defining a “filter” as any separation device, the Examiner is not using the term within the plain meaning of the word. Support was furnished with Amendment C showing that a “filter” requires passing a gas or a liquid through a porous medium in order to separate components. The liquid collection device of Flower does not meet this criterion. Applicants respectfully submit that Flower fails to recite a filter as featured in Applicants’ claims.

Thus, none of Applicants’ claims are anticipated by Flower in U.S. Patent No. 3,520,300. Flower fails to reveal at least two elements of Applicants’ invention as claimed. Applicants have traversed the rejection and respectfully request that this rejection be withdrawn.

Claims 1-2, 3, 4-6, 13, 15 and 17-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Heaton et al. in WO 99/13793 in view of Flower. Heaton does not teach or suggest inclusion of a filter in the supply conduit. Applicants respectfully traverse this rejection as no *prima facie* case of obviousness has been established.

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Even if the references are combined as suggested in the outstanding Office Action, each and every feature of Applicants' claims has not been shown. Arguments asserted above with respect to Flower are reasserted here. This is a suction device, no gas source is taught or shown in the combination of Flower and Heaton. No filter is taught or suggested in either reference. Since these same claim elements are absent from Flower, even in combination, all elements of Applicants' claims are not described.

Therefore, since all features of Applicants' claims are not shown, it has been demonstrated that no *prima facie* case of obviousness has been shown. Applicants respectfully request that the rejection be withdrawn and the subject claims allowed to issue.

Claims 8-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Flower in view of Heimlich in U.S. Patent No. 3,762,372. No gas source or filter is taught in either of the references, and therefore cannot be present in the combination. Applicants traverse this rejection as no *prima facie* case of obviousness has been established.

Even if Heimlich teaches all that the Examiner represents, it fails to cure the deficiencies of Flower with respect to claim 1. Arguments asserted above with respect to the § 102 rejection of Flower are reasserted here. With at least two claim elements absent, each and every claim element is not taught by the combination of Heaton, Flower and Heimlich.

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In view of these deficiencies, no *prima facie* case of obviousness has been established. Applicants respectfully request that this rejection be withdrawn and that the subject claims be allowed to issue.

Claims 8-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Heaton in view of Flower and further in view of Heimlich. No gas source or filter is taught in any of the references, and therefore cannot be present in the combination. Applicants traverse this rejection as no *prima facie* case of obviousness has been established.

Even if Heimlich teaches all that the Examiner represents, it fails to cure the deficiencies of Flower with respect to claim 1. Arguments asserted above with respect to the § 102 rejection of Flower are reasserted here. With at least two claim elements absent, each and every claim element is not taught by the combination of Heaton, Flower and Heimlich.

In view of these deficiencies, no *prima facie* case of obviousness has been established. Applicants respectfully request that this rejection be withdrawn and that the subject claims be allowed to issue.

Claim 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Flower in view of Wood. Arguments asserted above with respect to the presence of a gas source are reasserted here. No gas source is revealed in either of the references, therefore, it cannot be present in the combination. Since no *prima facie* case of

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obviousness has been established, Applicants respectfully request that the rejection be withdrawn.

None of the cited references provides a gas delivery system. Further, the outstanding Office Action evidences picking and choosing of elements in the reference, applying them where there is no suggestion or motivation to do so. References should be considered for all that they disclose.

By the above arguments and amendments, Applicants believe that they have complied with all requirements expressly set forth in the pending Office Action. Issuance of a Notice of Allowance on the remaining allowed claims is respectfully requested. Should the Examiner discover there are remaining issues which may be resolved by a telephone interview, he is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

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